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NOT FOR CITATION  
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10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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13 MARIO K. BENNETT, ) No. C 06-4399 JF (PR)  
14 vs. Plaintiff, ) ORDER GRANTING  
15 JEANNE WOODFORD, et al., ) PLAINTIFF'S MOTION TO  
16 Defendants. ) DISMISS; ORDER OF  
17 ) DISMISSAL  
18 \_\_\_\_\_) (Docket No. 95)

19 Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant  
20 to 42 U.S.C. § 1983 against Pelican Bay State Prison (“PBSP”) officials and the Director  
21 of the California Department of Corrections and Rehabilitation. Plaintiff has been  
22 granted leave to proceed in forma pauperis in a separate written order. The Court initially  
23 dismissed the complaint with leave to amend. Plaintiff filed three amended complaints on  
24 April 16, April 23, and May 17, 2007. On March 21, 2008, the Court issued an order  
25 addressing Plaintiff’s pending motions and stated it would review the amended complaint  
26 in a separate written order. On April 16, 2008, Plaintiff filed a motion to dismiss stating  
27 that he would like to withdraw and dismiss all of his civil rights cases pending in this  
28 Court. See Pl.’s Mot. at 1.

## DISCUSSION

2 Plaintiff moves the Court to withdraw and dismiss the instant civil rights action. A  
3 plaintiff has the absolute right to dismiss his or her action by filing a notice of dismissal  
4 “at any time before service by the adverse party of an answer or of a motion for summary  
5 judgment.” Fed. R. Civ. P. 41(a)(1)(i). Said dismissal may be with or without prejudice,  
6 but unless plaintiff’s notice of dismissal states otherwise, it is deemed to be “without  
7 prejudice.” See Fed. R. Civ. P. 41(a)(1); Humphreys v. United States, 272 F.2d 411, 412  
8 (9th Cir. 1959). No court order is required. Plaintiff’s notice of dismissal is effective by  
9 itself to terminate the action: “[A]n action may be dismissed by the plaintiff without order  
10 of the court . . . by filing a notice of dismissal.” Fed. R. Civ. P. 41(a)(1); see also  
11 Hamilton v. Shearson-Lehman American Exp. Inc., 813 F.2d 1532, 1534-1536 (9th Cir.  
12 1987) (Rule 41(a)(1)(i) does not require leave of court to dismiss the action).

13        Accordingly, the instant civil rights action is DISMISSED without prejudice. The  
14 Clerk shall terminate any pending motions and close the file.

IT IS SO ORDERED.

DATED: 4/18/08

  
JEREMY FOGEL  
United States District Judge